In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 3805 of 2005

Date of Decision: September 25, 2006

Vivek Singh

…Petitioner

Versus

Maharshi Dayanand University and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. J.S. Dahiya, Advocate,
for the petitioner.

Mr. Rajinder Goel, Advocate,
for respondent No. 2.

Mr. Harish Rathee, Sr. DAG, Haryana,
for respondent No. 3.

JUDGMENT

M.M. KUMAR, J. (Oral)

The petitioner has filed the instant petition under Article 226 of the Constitution challenging the practice adopted by the respondents in limiting the appointment for a fixed period. A further prayer has been made to direct the respondents to allow the petitioner to continue till regular appointments are made in accordance with

law. It has further been prayed that salary and allowances, which are being paid to the regular employees, be also paid to the petitioner from the date of his initial appointment.

Having perused the record and hearing learned counsel for the parties, we are of the considered view that as far as the first prayer of the petitioner is concerned, no such directions could now be issued in view of the Constitution Bench judgment of Hon'ble the Supreme Court in the case of **Secretary, State of Karnataka v. Umadevi, (2006) 4 SCC 1** as well as a detailed judgment of this Court in the case of **Rajinder Kumar v. State of Haryana, 2006 (2) PLR 474**. Therefore, the instant petition, in so far as, it seeks issuance of direction to the respondents to allow the petitioner to continue till the regular appointments are made, is dismissed.

Having dismissed the petition to the above extent, we take notice of the fact that the respondents have been filling up posts on ad hoc basis for the last over 6-7 years, which would amply highlight that work of the post exists. The petitioner has been paid salary for less than those who are regularly appointed although he might be discharging similar or same duties. Therefore, we are inclined to issue direction in accordance with the view taken by the Constitution Bench of Hon'ble the Supreme Court in Umadevi's case (supra). In para 55 of Umadevi's case (supra) a limited relief has been given to the petitioner. Firstly, it has been held that the daily wage employees shall be given the minimum of the pay scale and secondly if sanctioned posts are vacant, the State was to take

immediate steps for filling up those posts by a regular process of selection and those who are working on daily wages were to be granted permission to compete by waiving the age restriction imposed for the recruitment. It has further been held that some weightage for their having been engaged for work in the Department for a significant period of time was to be granted. Para 55 of the judgment in Umadevi's case (supra) reads as under:-

> " 55. In cases relating to service in the Commercial Taxes Department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called

and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily-wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that the courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularisation. We also notice that the High Court has not adverted to the aspect as to whether it was regularisation or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If

> sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in CAs Nos. 3595-612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court Article 142 of the Constitution to do justice to them." (emphasis added)

In view of the aforementioned view expressed by Hon'ble the Supreme Court, we direct the respondents to grant to the petitioner minimum of the pay scale given to the regular employees of his cadre. The petitioner is held entitled to arrears for three years two months (38 months) preceding the date of filing the petition.

We further hold that if sanctioned posts are lying vacant, the respondents shall take immediate steps for filling up those posts by a regular process of selection in accordance with the rules and law. In case the petitioner fulfil all other qualifications of the rules, he should also be permitted to compete, waiving the age restriction imposed for the recruitment and grant him some weightage in lieu of number of years of service rendered by him. The needful shall be

done within a period of four months from the date a certified copy of this order is supplied to the respondents.

The writ petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

September 25, 2006

Reema/Pkapoor

FIT FOR INDEXING